



DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 81

[2341A2100DD/AAKC001030/A0A501010.999900]

Policy Guidance for Determining Eligibility for Organization under the Alaska Indian Reorganization Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Policy guidance.

SUMMARY: This policy guidance clarifies the Department of the Interior’s (Department) criteria and procedures for determining whether an entity is eligible to organize under the Alaska amendment to the Indian Reorganization Act.

DATES: This policy guidance is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Oliver Whaley, Director, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, (202) 738-6065; oliver.whaley@bia.gov.

SUPPLEMENTARY INFORMATION:

Background

In 1936, Congress enacted an amendment to the Indian Reorganization Act (25 U.S.C. 5108), (Alaska IRA) to allow groups of Indians in Alaska, not previously recognized as bands or tribes by the United States, to organize under the IRA, provided they could demonstrate “a common bond of occupation, or association, or residence within a well-defined neighborhood, community or rural district.” *See* 25 U.S.C. 473a. In 1937, the Department of the Interior Secretary Harold Ickes approved “Instructions” describing the general characteristics of entities that may organize under the Alaska IRA

and the procedural requirements for organizing such entities, but do not address the question of eligibility or the factors that should be considered in determining an entity's eligibility to organize under the Alaska IRA.

Policy Guidance

This policy guidance clarifies the criteria and procedures for evaluating petitions for organization under the Alaska IRA and supersedes all prior guidance issued on the same subject. In particular, this guidance supersedes the "Instructions" approved by Department of the Interior Secretary Harold Ickes in 1937.

The criteria and procedures outlined in this policy guidance are intended to guide the Department in making consistent, substantive determinations as to whether an entity is eligible to organize under the Alaska IRA. The Alaska IRA establishes a "common bond" basis of organization for certain entities in Alaska, but is otherwise silent on the question of eligibility and gives no clear direction as to the Department's statutory responsibilities under the provision. This guidance proposes establishing a process for determining eligibility in a manner consistent with Federal Indian law and policy.

This process begins with the submission of an Alaska IRA petition to the Office of the Assistant Secretary – Indian Affairs (Office of the AS-IA). The Office of the AS-IA then reviews the petition. If Assistant Secretary – Indian Affairs (AS-IA) determines that a petitioning group satisfies the criteria established below and is eligible to organize under the Alaska IRA, the group will be included on the next list of federally recognized Indian tribes and can proceed with conducting a Secretarial election under 25 CFR part 81. A favorable determination of eligibility thus results in Federal recognition as an Indian tribe and entitles the group to interact with the United States on a government-to-government basis.

By recognizing that organization is a step that necessarily follows, rather than precedes, Federal recognition, this policy guidance brings the Alaska IRA in line with the

Department’s current practices and the modern notion of Tribal “organization” under the IRA. *See* 25 CFR part 81 (establishing the Department’s procedures for conducting Secretarial elections under the IRA and other laws, which apply exclusively to federally recognized Indian tribes). The criteria in this policy guidance is accordingly designed to ensure that a group seeking to organize under the Alaska IRA is a socio-political entity capable of maintaining a government-to-government relationship with the United States, and that only those entities entitled to Federal recognition are being organized under the Alaska IRA. *See* H. Rep. No. 103-781 (1994) (explaining that Federal recognition is “[a] formal political act” that “permanently establishes a government-to-government relationship between the United States and the recognized tribe as a ‘domestic dependent nation,’” and “institutionalizes the tribe’s quasi-sovereign status”).

Statutory Authority

The Department is issuing these criteria and procedures under 25 CFR part 81 and its authority over the management of all Indian Affairs under 25 U.S.C. 2.

Table of Contents

I. Criteria

1. Common bond
2. Political influence or authority
3. Governing document
4. Descent

II. Petition Requirements

III. Office of the AS-IA Review

IV. AS-IA Determination

I. Criteria

The Department will apply the following criteria in evaluating requests for organization under the Alaska IRA, taking into account historical situations and time

periods for which evidence is demonstrably limited or not available. Given the unique conditions in Alaska, the Department will evaluate each criteria in the context of the group's history, geographical location, culture, and social organization.

1. Common bond

The petitioning group has maintained a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district on a substantially continuous basis from May 1, 1936, until the present. For purposes of this criteria, having a common bond means that the petitioner is bound together by their common interest and actions taken in common, and is distinguishable from other groups or associations. The claimed common bond must be clear and capable of statement and definition:

- a. For petitioners seeking to organize on the basis of residence, there is no requirement that members of the group all live in one community or village.
- b. For petitioners seeking to organize on the basis of occupation or association, a substantial share of the persons within the petitioning group must demonstrate participation in the activities constituting the common bond.

2. Political influence or authority

The petitioner has maintained political influence or authority over its members as an autonomous entity. Political influence or authority means the entity uses a council, leadership, internal process, or other mechanism as a means of influencing or controlling the behavior of its members in significant respects, making decisions for the entity which substantially affect its members, and/or representing the entity in dealing with outsiders in matters of consequence. This criteria is to be understood flexibly, taking into account the limitations inherent in demonstrating historical existence of political influence or authority.

3. Governing document

The petitioner has provided a copy of the entity's present governing document, including its membership criteria. In the absence of a governing document, the petitioner can provide a written statement describing in full its membership criteria and current governing procedures.

4. Descent

A significant and meaningful portion of the petitioner's membership is comprised of individuals who descend from the Alaska IRA-eligible entity that existed on May 1, 1936. Any members who do not descend genealogically from members of the Alaska IRA-eligible entity that existed on May 1, 1936, must be able to document their integration into the petitioning group.

5. Unique membership

The petitioner's membership is composed principally of persons who are not members of any federally recognized Indian tribe. However, a petitioner is still eligible to organize under the Alaska IRA even if its membership is composed principally of persons whose names have appeared on the membership list of, or who have been otherwise associated with, a federally recognized Indian Tribe, if the petitioner demonstrates that:

- a. It has functioned as a separate politically autonomous community by satisfying criteria (1) and (2) of this section; and
- b. Its members have provided written confirmation of their membership in the petitioner.

6. Congressional termination

Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

II. Petition Requirements

A petition to organize under the Alaska IRA should be submitted to the Office of the AS-IA. The Office of the AS-IA will accept the petition in any readable form.

The petition should include the following:

- a. A concise written narrative, with citations to supporting documentation, thoroughly explaining how the petitioner meets each of the criteria listed above;
- b. Supporting documentation cited in the written narrative and containing specific, detailed evidence that the petitioner meets each of the criteria listed above; and
- c. An official current membership list of all known current members of the petitioner, including each member's full name (including maiden name, if any), date of birth, and current residential address.

If the petition contains any information that is protectable under Federal law such as the Privacy Act and Freedom of Information Act, the petitioner should be required to provide a redacted version, an unredacted version of the relevant pages, and an explanation of the legal basis for withholding such information from public release.

III. Office of the AS-IA Review

Upon receipt of a petition, the Office of the AS-IA will review the petition and supporting documentation to determine whether the petitioner has provided sufficient evidence to meet each of the criteria listed above. Prior to completing its review, the Office of the AS-IA will advise the petitioner of any evidentiary gaps for the criteria and provide the petitioner with an opportunity to supplement or revise the petition. As part of its review of the petition, the Office of the AS-IA may also:

- a. Initiate and consider other research for any purpose relative to analyzing the petition and obtaining additional information about the petitioner's status;
- b. Request and consider timely submitted additional explanations and information from the petitioner; and

c. Consider any comments and evidence received from other parties to the extent they are relevant to the above criteria. The Office of Federal Acknowledgment (OFA), within the Office of the AS-IA, will provide the petitioner with any material received from other parties and provide the petitioner with the opportunity to respond to the material.

IV. AS-IA Determination

After the review of the petition, AS-IA will issue a decision determining whether the petitioner meets the above criteria and is eligible for organization under the Alaska IRA. The decision will summarize the evidence, reasoning, and analyses that are the basis for AS-IA's determination.

If AS-IA determines the petitioner is eligible for organization under the Alaska IRA, the petitioner can proceed with requesting a Secretarial election pursuant to 25 CFR part 81 and will be included on the next list of federally recognized Indian tribes published in the Federal Register.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023-03017 Filed: 2/10/2023 8:45 am; Publication Date: 2/13/2023]